



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/160053

PRELIMINARY RECITALS

Pursuant to a petition filed August 22, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Walworth County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on September 24, 2014, at Elkhorn, Wisconsin.

The issue for determination is whether Petitioner is liable for overissued FoodShare benefits and, if so, in what amount.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Dianna Wojcik

Walworth County Department of Human Services
W4051 County Rd NN
Elkhorn, WI 53121-1006

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Walworth County.
2. Petitioner was sent three Notices of FoodShare Overpayment, all dated May 30, 2014, that collectively informed Petitioner that he was liable for a \$9819.00 overpayment of FoodShare benefits made to the FoodShare household of the mother of his children, HW. The overpayment

period is March 1, 2012 through December 31, 2013. The reason for the alleged overpayment was that Petitioner was in the home, that this was not reported by HW or Petitioner and that Petitioner's income made the household ineligible for FoodShare.

3. The birthdates of the children in common are: August 11, [REDACTED] and December 13, [REDACTED].
4. Petitioner is the owner of the residence at which HW and the couple's children were residing. That property is the only address for Petitioner that the agency was aware of going back to [REDACTED] and that Petitioner used this address for any and every other purpose is not disputed.
5. HW was also sent overpayment notices alleging liability for these same overpayments as Petitioner. They were also dated May 30, 2014. She did not file an appeal with the Division of Hearings and Appeals; asked why at the hearing – her response was that 'Petitioner usually took care of such things'.
6. Petitioner and HW did move in together approximately 1 year prior to this hearing.

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. *Id.*

Additionally, Federal Regulations provide, in relevant part, as follows:

- (a) **Establishing claims against households.** All adult household members shall be jointly and severally liable for the value of any overissuance of benefits to the household. The State Agency shall establish a claim against any household that has received more food stamp benefits than it is entitled to receive . . .
7 CFR § 273.18; also see FoodShare Wisconsin Handbook (FSH), § 7.3.1.1.

Finally, in an administrative hearing concerning the propriety of an overpayment of benefits the agency has the burden of proof to establish that the action taken by the agency was correct. A petitioner must then rebut the agency's case and establish facts sufficient to overcome the evidence of correct action by the agency in determining the overpayment action was required.

The documentary record provided by the agency is not disputed. That Petitioner used the address at which HW and his children were living is not disputed. This does establish a prima facie case for the proposition that Petitioner and HW were residing together. Additionally, a half page investigative report from O'Brien & Associates was provided but the author did not testify. That report is entirely hearsay – the writer asked a neighbor of HW's about household composition and that neighbor said a man lived there. No time line was noted. The Division of Hearings and Appeals cannot rely on uncorroborated hearsay in making a decision so the O'Brien report was not a factor in this decision.

The question becomes whether the testimony of Petitioner and his witnesses overcomes that prima facie case.

Petitioner testified that he and HW were a couple but the relationship broke up and that he did not live with her during the time period involved here up to a year before the hearing. He stated that he moved out so as not to make the children leave their home. He reported that he does have a shop at the house which he will occasionally use to do projects. He was involved with the children so would sometimes be at the house because of them.

A friend of Petitioner's testified that Petitioner lived with him during much of the time involved here. He stated that Petitioner last lived with him until about a year prior to the hearing. He stated that Petitioner had been very helpful with his brother (i.e., the testifying friend's brother) when he was dying and that he knew Petitioner was having domestic issues and wanted to repay the kindness given to his brother by Petitioner.

Petitioner's sister also testified and indicated that Petitioner stayed with her at least 2 times per week until about a year before the hearing and that he kept his personal belongings at her home. She lives in [REDACTED] Illinois, about 45 minutes from the [REDACTED] area.

This is a close case. Because this was a telephone hearing, the ability to judge credibility has its challenges. Nonetheless, I am finding the testimony of Petitioner and his witnesses credible and am partially reversing this overpayment.

The testimony of Petitioner, his friend and his sister was remarkably similar. Both the friend and the sister testified via telephone. Neither heard any of the other testimony. Petitioner and both of them were matter of fact. There was no anger, no hint of drama or self-righteous indignation. Additionally, Petitioner was paying child support. Petitioner was open about the use of the address and, on occasion, the workshop. All testified that Petitioner and HW were back together about a year before the hearing – an admission that there was an overpayment for that time period to the end of 2013. For all of these reasons I conclude that there was an overpayment here but that it is only for the time period from September 2013 through December 2013. While the record is somewhat vague as to a September start date, the testimony was that it was a year before this September hearing.

There is a complication here – HW did not appeal this overpayment. She was sent the same notices as Petitioner here. The Division of Hearings and Appeals does not, however, have authority as to that overpayment as no appeal was filed.

CONCLUSIONS OF LAW

1. That the evidence provided on behalf of Petitioner is sufficient to rebut the claim that Petitioner was overpaid FoodShare benefits for the period from March 2012 through August 2013.
2. That the evidence provided at the hearing is sufficient to demonstrate that Petitioner is liable for a FoodShare overissuance for the period from September 2013 through December 2013. (This is \$1935.00 per the agency overpayment worksheets.)

THEREFORE, it is

ORDERED

This matter is remanded to the agency with instructions to take the administrative steps necessary to reduce Petitioner's liability for the FoodShare overissuance involved here to \$1935.00 by removing the months from March 2012 through August 2013 from the amount of the overpayment for which Petitioner is liable. This must be done within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

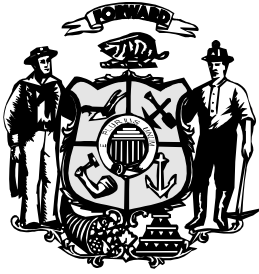
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of October, 2014

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 21, 2014.

Walworth County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability